

## **CHAPTER 16**

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## **CHAPTER 16**

### **LIABILITY OF ACCOUNTABLE OFFICERS**

#### **I. REFERENCES.**

- A. 31 U.S.C. § 3325 (requiring certifying officers within DOD).
- B. 31 U.S.C. § 3528 (specifying responsibilities and relief from liability of certifying officers).
- C. 31 U.S.C. § 3527 (relief of accountable officers other than certifying officers).
- D. Dep't of Defense Reg. 7000.14-R, Financial Management Regulation, Volume 5, Disbursing Policies and Procedures [hereinafter DOD 7000.14-R, vol. 5]. Go to <http://www.dtic.mil/comptroller/fmr>.
- E. DFAS-IN (Defense Finance and Accounting Service-Indianapolis) Reg. 37-1, Finance and Accounting Policy Implementation (Jan. 2000). Go to <http://dfas4dod.dfas.mil/centers/dfasin/library/ar37-1>.
- F. DFAS-DE (Defense Finance and Accounting Service-Denver) 7010.1-R, General Accounting and Finance Systems at Base Level (15 Feb. 1991), ch. 11. Go to <http://info-de.dfas.mil>.

#### **II. TYPES OF ACCOUNTABLE OFFICERS.**

- A. Definitions.
  - 1. An accountable officer is any government employee who is responsible for or has custody of government funds. See Lieutenant Commander Michael S. Schwartz, USN, B-245773, May 14, 1992 (unpub.); Mr. Charles R. Hartgraves, B-234242, Feb. 6, 1990 (unpub.). The DOD refers to this broad universe of persons as “accountable individuals.” DOD 7000.14-R, vol. 5, Definitions.

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2. Any government officer or employee, military or civilian, who handles government funds physically, even if only once or occasionally, is “accountable” for those funds while they are in his custody. Mr. Melvin L. Hines, B-247708, 72 Comp. Gen. 49 (1992); Finality of Immigration and Naturalization Service’s Decision on Responsibility of Accountable Officer for Physical Losses of Funds, B-195227, 59 Comp. Gen. 113 (1979).
3. Absent statutory authority, agency officials who are not designated “certifying official” are not personally liable for illegal, improper, or incorrect payments. Department of Defense—Authority to Impose Pecuniary Liability by Regulation, B-280764, May 4, 2000 (unpub.)

B. Certifying Officers and Other Accountable Officers Distinguished.

1. Certifying Officer. One who certifies that payment vouchers are correct and ready for payment. Certifying officers do not “hold” public funds. DOD 7000.14-R, vol. 5, Definitions, p. xxv; vol. 5, ch. 33, para. 331007.
2. Other Accountable Officers. Any other officer or employee, including one not involved directly in government fiscal operations, who has custody or control of federal funds.
  - a. Disbursing Officer. One who disburses funds and renders accounts in accordance with laws and regulations governing disbursement of public funds. DOD 7000.14-R, vol. 5, Definitions, p. xxix. See generally 31 U.S.C. § 3325.
  - b. Cashier. One appointed to perform limited cash-disbursing functions or other cash-handling operations to assist a finance officer or other subordinate/assistant of the finance officer. DOD 7000.14-R, vol. 5, ch. 2, para. 020603.B. See Mr. David J. Bechtol, B-272615, May 19, 1997 (unpub.) (disbursing officer and his subordinate cashiers are jointly and severally liable for loss of funds and must separately petition for relief).

c. Other agents and custodians.

- (1) Paying agents are appointed only when adequate payment, currency conversion, or check cashing services cannot otherwise be provided. Paying agents cannot act as purchasing officers. DOD 7000.14-R, vol. 5, ch.2, para. 020604.
- (2) Collection agents receive funds generated from activities such as hospitalization fees and other medical facility charges, rentals, and other charges associated with housing, reproduction fees, and other similar functions. DOD 7000.14-R, vol. 5, ch. 2, para. 020701.
- (3) Imprest fund cashiers make authorized cash payments for purchases of materials and non-personal services, maintain custody of funds, and account for and replenish the imprest fund as necessary. DOD 7000.14-R, vol. 5, ch. 2, para. 020905.A.

3. Accountable Officials. In DOD, the term “accountable official” has a special meaning. An accountable official is any person, not otherwise accountable under applicable law, who provides information, data, or services to a certifying or disbursing officer in support of the payment process. See DOD 7000.14-R, vol. 5, ch. 33, paras. 330302 and 331001. An accountable official now includes certain persons involved with, *e.g.*,

- a. Purchase card program;
- b. Temporary duty (TDY) travel authorizations;
- c. Contract and vendor payments;
- d. Military and civilian payments; and

- e. Permanent changes of station (PCS).

### **III. LIABILITY OF ACCOUNTABLE OFFICERS.**

A. Certifying Officers. 31 U.S.C. § 3528; DOD 7000.14-R, vol. 5, ch. 33.

- 1. A certifying officer:
  - a. Is responsible for the correctness of the facts recited in the certificate, or otherwise stated on the voucher or supporting papers;
  - b. Is responsible for the legality of the proposed payment under the appropriation or fund involved; and
  - c. Is accountable for the amount of any illegal, improper, or incorrect payment resulting from any false, inaccurate, or misleading certification.
- 2. Certifying officers must ensure vouchers are computed correctly.
- 3. Liability attaches when an official makes an erroneous payment based on an improperly certified voucher. In the Matter of Responsibilities and Liabilities of Certifying Officers, B-184145, 55 Comp. Gen. 297 (1975).

B. Disbursing Officers. 31 U.S.C. § 3325; DOD 7000.14-R, vol. 5, ch. 1, para. 0104.

- 1. Disbursing officers are:
  - a. Responsible for examining vouchers as necessary to ensure that they are in the proper form, duly certified and approved, and computed correctly on the basis of the facts certified.
  - b. Responsible for disbursing funds only upon, and in strict accordance with, duly certified vouchers.

- c. Not liable for losses due to improperly calculated vouchers.
  - 2. Generally, disbursing officers are accountable for illegal, improper, or incorrect payments, as well as account errors, even though they relied on other persons, and those persons actually caused the error. Mr. David L. Gagermeier, B-274364, Apr. 23, 1997 (unpub.). See DOD 7000.14-R, vol. 5, ch. 1, para. 010501.C.
  - 3. DOD disbursing officers, however, are not liable for payments made in reliance upon properly certified vouchers. See DOD 7000.14-R, vol. 5, ch. 1, para. 010501.C.
- C. DOD Accountable Officials. DOD 7000.14-R, vol. 5, ch. 33, para. 330701. Although DOD imposed pecuniary liability on “accountable officials” in DOD 7000.14-R, GAO held that such an administrative extension of pecuniary liability was improper and that agencies may impose pecuniary liability only with a statutory basis. See Department of Defense—Authority to Impose Pecuniary Liability by Regulation, B-280764, May 4, 2000.
- D. “Possessory” Accountable Officers. Those entrusted with funds are liable for any and all losses. There is no liability limitation for these accountable officers. Sergeant Charles E. North--Relief of an Accountable Officer, B-238362, 69 Comp. Gen. 586 (1990).
- E. The Nature of Accountable Officer Liability.
- 1. Accountable officers are strictly liable for losses or erroneous payments of public funds. They are “insurers” of public funds in their custody, or for which they are otherwise responsible. Liability does not attach for losses due to acts of God or acts of the public enemy. DOD 7000.14-R, vol. 5, app. C, para. D. See United States v. Prescott, 44 U.S. 578 (1845); Serrano v. United States, 612 F.2d 525 (Ct. Cl. 1979); Personal Accountability of Accountable Officers, B-161457, 54 Comp. Gen. 112 (1974).

2. Lack of fault or negligence, however, may provide a basis for relief from the obligation to repay the loss. DOD 7000.14-R, vol. 5, app. C, para. G. See Mr. David J. Bechtol, B-271608, June 21, 1996 (unpub.); Department of the Navy, B-238123, 70 Comp. Gen. 298 (1991); State Department, B-238898, 70 Comp. Gen. 389 (1991); Sergeant Charles E. North--Relief of an Accountable Officer, B-238362, 69 Comp. Gen. 586 (1990); Personal Accountability of Accountable Officers, B-161457, 54 Comp. Gen. 112 (1974).
3. DOD “accountable officials” are not strictly liable; no presumption of negligence applies. DOD 7000.14-R, vol. 5, ch. 33, para. 3309 and app. C., para. G.

#### IV. PROTECTION AND RELIEF FROM LIABILITY.

##### A. Advance Decisions from the Comptroller General.

1. A certifying officer, disbursing officer, or head of an agency may request an opinion concerning the propriety of a certification or disbursement. 31 U.S.C. § 3529; DOD 7000.14-R, vol. 5, para. 250102; DFAS-DE 7010.1-R, ch. 11, para. 11-9.
2. For DOD, the Comptroller General issues advance decisions on the use of appropriated funds, except in those instances set forth in paragraph B, below. DOD 7000.14-R, vol. 5, ch. 25, para. 250102.C and ch. 25, app. E.
  - a. If a claim is \$100 or less, the GAO has delegated authority to agencies to issue binding opinions. GAO, Policy and Procedures Manual for Guidance of Federal Agencies, Title 7, § 8.3. For DOD, the Secretary of Defense has delegated to the heads of DFAS Centers authority to render conclusive opinions concerning the propriety of a disbursement. DOD 7000.14-R, vol. 5, para. 250103.
  - b. If the claim exceeds \$100, DFAS may render an advisory opinion. Only a Comptroller General opinion, however, will shield a disbursing officer from liability. DOD 7000.14-R, vol. 5, ch. 25, para. 250103.



3. Upon request, the Comptroller General will decide any question involving:
  - a. A payment the disbursing official or the head of the agency proposes to make; or
  - b. A voucher presented to a certifying official for certification.
- B. Agency Advance Decisions. See DOD 7000.14-R, vol. 5, ch. 25, app. E. Per the General Accounting Office Act of 1996, Pub. L. 104-316, § 204, 110 Stat. 3826, 3845-46, the following are authorized to issue advance decisions for designated claims categories:
  1. DOD (DOD General Counsel): military member pay, allowances, travel, transportation costs; survivor benefits; and retired pay.
  2. Office of Personnel Management (OPM): civilian compensation and leave.
  3. General Services Administration Board of Contract Appeals (GSBCA): civilian employee travel, transportation, and relocation allowances.
- C. Relief of Non-DOD Certifying Officers. 31 U.S.C. § 3528(b).
  1. The Comptroller General may relieve a certifying officer from liability if:
    - a. The officer based the improper certification on official records and the officer did not know, or reasonably could not have known, that the information was incorrect;

OR

- b. The obligation was in good faith, no law specifically prohibited the payment, and the government received some benefit. 31 U.S.C. § 3528(b)(1)(B). See Environmental Protection Agency, B-262110, Mar. 19, 1997, 97-1 CPD ¶ 131 (certifying officials not required to second-guess discretionary decisions of senior agency officials); Ms. Trudy Huskamp Peterson, B-257893 June 1, 1995 (unpub.).
  - 2. The Comptroller General will deny relief if the agency did not attempt diligently to collect an erroneous payment.
- D. Relief of DOD Certifying Officers. DOD 7000.14-R, vol. 5, ch. 6, para. 060903. Cf. 31 U.S.C. § 3528.
- 1. The DOD Financial Management Regulation, as amended in August 1999, authorizes Directors of the DFAS Centers to grant or deny certifying officers relief for illegal, incorrect, or improper payments.
  - 2. Directors must adhere to the same criteria the Comptroller General would consider in reviewing certifying officer cases. See para. C., above.
- E. Relief of Other Non-DOD Accountable Officers. 31 U.S.C. § 3527(a).
- 1. Applicability. The Comptroller General may relieve an accountable officer from liability for the physical loss or deficiency of public money, vouchers, checks, securities, or records when:
    - a. The agency head finds that:
      - (1) The officer or agent was carrying out official duties when the loss or deficiency occurred or the loss or deficiency occurred because of an act or failure to act by a subordinate of the officer or agent; and
      - (2) The loss or deficiency was not the result of fault or negligence of the officer or agent. See Mr. Melvin L. Hines, B-247708, 72 Comp. Gen. 49 (1992).

- b. The loss or deficiency was not the result of an illegal or incorrect payment; and
    - c. The Comptroller General agrees with the decision of the head of the agency.
  - 2. The Comptroller General has delegated to agency heads the authority to resolve irregularities when a loss is less than \$3,000. See GAO, Policy and Procedures Manual for Guidance of Federal Agencies, Title 7, § 8.9.C; Mr. Frank Palmer, B-252809, Apr. 7, 1993 (unpub.); Mr. Thomas M. Vapniarek, B-249796, Feb. 9, 1993 (unpub.); Mr. Melvin L. Hines, B-247708, 72 Comp. Gen. 49 (1992).
  - 3. Alternatively, the Comptroller General may authorize reimbursement of amounts paid by the responsible official as restitution.
- F. Relief of DOD Disbursing Officers for Physical Losses. 31 U.S.C. § 3527(b)(1)(A); DOD 7000.14-R, ch. 6, para. 060902.
- 1. The Comptroller General shall relieve a disbursing official of the armed forces who is responsible for the physical loss or deficiency of public money, vouchers, or records when:
    - a. The Secretary of Defense determines that the officer was carrying out official duties when the loss or deficiency occurred;
    - b. The loss or deficiency was not the result of fault or negligence by the official; and
    - c. The loss or deficiency was not the result of an illegal or incorrect payment.
  - 2. Under the statute, the SECDEF's finding binds the Comptroller General. For this reason, the Comptroller General does not require military departments to forward these relief determinations for approval. GAO Policy and Procedures Manual for Guidance of Federal Agencies, Title 7, § 8.10; Mr. William Duff, B-271859, Sep. 26, 1996 (unpub.).

3. The SECDEF has delegated authority to certain DFAS officials (usually the directors of DFAS Centers). DOD 7000.14-R, vol. 5, ch. 6, para. 060902.
  4. Disbursing officials include: deputy disbursing officers, disbursing agents, cashiers, agent cashiers, collection agents, paying agents, imprest fund cashiers, and change fund custodians. DOD 7000.14-R, ch. 6, para. 060902.
- G. Relief of DOD Disbursing Officers for Illegal, Incorrect, or Improper Payments. 31 U.S.C. § 3527(b)(1)(B); DOD 7000.14-R, ch. 6, para. 060903.A. See generally Mr. David J. Bechtol, B-272615, May 19, 1997 (unpub.).
1. Per the statute, the Comptroller General shall relieve an accountable officer of the armed forces who makes an improper, illegal, or incorrect payment, if the Secretary of Defense finds that:
    - a. The payment was based on official records and the disbursing officer could not have known the information was incorrect;
- OR**
- b. The payment was not made in bad faith.
  2. Diligent collection action is required.
  3. The DOD FMR doesn't include the first prong of the disbursing officer relief statute apparently because DOD has decided that disbursing officers who rely on certifications aren't liable. See DOD 7000.14-R, vol. 5, ch. 1, para. 010502.B.2.
  4. DFAS Center Directors grant or deny relief.

H. Relief of Non-DOD Disbursing Officers for Illegal, Improper, or Incorrect Payments. 31 U.S.C. 3527(c).

1. The Comptroller General may, on his own initiative, or on the written recommendation of the head of an agency, relieve a disbursing official responsible for a deficiency in an account because of an illegal, improper, or incorrect payment when the Comptroller General decides that the payment was not made as a result of bad faith or lack of reasonable care by the official.
2. The Comptroller General may deny relief if the agency did not pursue collection action diligently.

I. Judicial Relief--U.S. Court of Federal Claims.

1. Disbursing officers. Under 28 U.S.C. § 1496, the court has jurisdiction to review disbursing officer cases. Whenever the court finds that a loss by a disbursing officer of the United States was without his fault or negligence, it shall render a judgment setting forth the amount. The General Accounting Office shall allow the officer such amount in settlement of his accounts. See 28 U.S.C. § 2512.
2. Any individual. If an agency withholds the pay of any individual, that person may request that the General Accounting Office report the balance due to the Attorney General. The Attorney General shall then initiate a suit against the individual. See 5 U.S.C. § 5512(b).

J. Legislative Relief. Private and collective relief legislation.

**V. ESTABLISHING LIABILITY.**

A. Required Action. Department of the Air Force, B-239483.2, 70 Comp. Gen. 616, 622 (1991).

1. Before initiating collection for a loss, the appropriate agency must establish the accountable officer's liability "permanently." DOD 7000.14-R, vol. 5, app. C.

2. Permanently establish means that the officer has agreed to repay the loss or the appropriate authority has denied relief.
  1. DOD 7000.14-R requires a formal investigation for physical losses of \$750 or more or erroneous payments induced by fraud. The commander may investigate other losses formally as well. See DOD 7000.14-R, vol. 5, ch. 6, paras. 060301.C and 060503. See also DOD 7000.14-R, vol. 5, ch. 6, sec. 0607 (investigation requirements and procedures).
- B. Statute of Limitations. 31 U.S.C. § 3526(c)(1).
1. The statute of limitations for settling accounts of an accountable officer is three years after agency accounts are substantially complete. See Department of the Air Force, B-239483.2, 70 Comp. Gen. 616 (1991); Department of the Air Force, B-239483, 70 Comp. Gen. 420 (1991). After this period, the account is settled by operation of law, and an accountable officer has no personal financial liability for the loss in question. Mr. John S. Nabil, B-258735, Dec. 15, 1994 (unpub.).
  2. “Substantially complete” means the time when, absent fraud by the officer, the agency can audit the paperwork upon which the officer based his action. Relief of Anna L. Pescod, B-251994, Sept. 24, 1993 (unpub.). DOD 7000.14-R includes detailed examples of when the three-year period begins. See DOD 7000.14-R, vol. 5, ch. 6, para. 060802.
  3. If the loss is due to embezzlement, fraud, or other criminal activity, the three-year statute of limitations is not triggered until the loss has been discovered and reported. Steve E. Turner, B-270442.2, Feb. 12, 1996 (unpub.) DOD 7000.14-R, vol. 5, ch. 6, para. 060801.
  4. The statute of limitations does not apply if a loss is due to fraud or other criminal acts of an accountable officer. 31 U.S.C. § 3526(c)(2).

## VI. MATTERS OF PROOF.

- A. Evidentiary Showing. To qualify for relief from liability for a loss or deficiency under the statutes, an accountable officer generally must prove that he was acting in an official capacity and was either not negligent or that his negligence did not cause the loss. 31 U.S.C. § 3527. Mr. S.M. Helmrich, B-26586, Nov. 9, 1995 (unpub.). See also DOD 7000.14-R, vol. 5, app. C, para. G.
  
- B. The “Reasonable Care” Standard.
  - 1. In determining whether an officer was negligent, the Comptroller General applies a “reasonable care” standard. In the Matter of Personal Accountability of Accountable Officers, B-161457, Aug. 1, 1969 (unpub.).
    - a. Liability results when an accountable officer’s conduct constitutes simple or ordinary negligence. Gross negligence is not required.
    - b. The standard is whether the accountable officer did what a reasonably prudent and careful person would have done to safeguard his/her own property under similar circumstances.
    - c. This is an “objective” standard. It does not vary with such factors as the level of experience or the age of the particular accountable officer concerned. Mr. Frank D. Derville, B-241478, Apr. 5, 1991 (unpub.).
    - d. Failure to follow regulations is negligence. Hence, accountable officers must familiarize themselves with applicable regulations. See DOD 7000.14-R, vol. 5, ch.1, para. 010501.B.

2. That a loss or deficiency has occurred creates a rebuttable presumption of negligence on the part of the accountable officer. This presumption arises from the accountable officer's strict liability for any loss or deficiency. The accountable officer can rebut this presumption of negligence by presenting affirmative evidence that he exercised due care. Serrano v. United States, 612 F.2d 525 (Ct. Cl. 1979); Darold D. Foxworthy, B-258357, Jan. 3, 1996 (unpub.) (loss of vouchers and receipts by imprest fund cashier); Mr. Gerald Murphy, B-249742.2, Nov. 24, 1993 (unpub.); Melvin L. Hines, B-243685, July 1, 1991 (unpub.); To the Postmaster General, B-166174, 48 Comp. Gen. 566 (1969). See DOD 7000.14-R, vol. 5, app. C, para. G.
  3. A presumption of negligence does not apply to acts of DOD "accountable officials." See DOD 7000.14-R, vol. 5, ch. 33, para. 3309; vol. 5, app. C, para. E.4.
- C. Proximate Cause. If the accountable officer was negligent, the Comptroller General will consider whether the negligence was the proximate cause of the loss or deficiency.
1. If negligence occurred and it was the proximate cause of the loss or deficiency, the Comptroller General may not grant relief from liability. 31 U.S.C. § 3527(a).
  2. If an accountable officer was negligent, but the negligence was not the proximate cause of the loss or deficiency, the Comptroller General may grant relief under the statute. DOD 7000.14-R, vol. 5, app. C, para. C108. See Department of the Navy, B-238123, 70 Comp. Gen. 298 (1991).

## VII. DEBT COLLECTION.

- A. Collection is pursuant to 31 U.S.C. §§ 3701-11 (Debt Collection Act) and 5 U.S.C. § 5512(a) (allowing offset against government employee or retiree pay). See 5 U.S.C. § 5514 (allowing payment by installment and limiting amount per period to 15%); see also 37 U.S.C. § 1007(a) (governing withholding of military officer pay); 10 U.S.C. § 9837(d) (remission of indebtedness); 10 U.S.C. § 1552 (correction of records).



- B. DOD has published detailed collection procedures. See DOD 7000.14-R, vol. 5, chs. 28-32.

## **VIII. CONCLUSION.**